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| Subject: Procedures for the Identification, Treatment and Disposition of <u>Non-Native American</u> Unmarked Human Burials and/or Skeletal Remains: Delaware's Unmarked Human Remains Law (Title 7 DE Code, Chapter 54) | Issuing Function: HCA | Number: 7 |
| Original Effective Date: 12-19-05 | Revision Date: | Expiration Date: |
| Affected Areas/Departments: Division of Historical and Cultural Affairs | | Contact: Human Remains Specialist |

I. PURPOSE:

This Standard Operating Procedure outlines the steps to be followed regarding the discovery, identification and protection of non-Native American unmarked human burials and/or skeletal remains. Identification and protection of Native American unmarked human burials and/or skeletal remains are handled by the Unmarked Human Remains Committee and procedures as outlined in the law. This Standard Operating Procedure also details the following actions:

1. Provide “*adequate protection*” for *unmarked human burials and human skeletal remains* found anywhere in Delaware [including sub aqueous lands], except those found on federal land or which are under the jurisdiction of the Medical Examiner.
2. Provide for *adequate skeletal (Osteological) analysis* of remains removed or excavated from unmarked burials.
3. Provide for *dignified and respectful re-interment or other disposition of Native American skeletal remains*. (Subsection 5401) [Emphasis added]

II. INTRODUCTION:

Large, well-marked, well-maintained cemeteries occur everywhere in the State. They are easy to recognize. Smaller cemeteries or burial grounds are often less conspicuous, if visible at all. Their general conditions will vary from well maintained to completely overgrown and neglected. When encountering isolated or what otherwise appears to be a discrete cluster of head and foot stones, you may observe that sometimes there is no associated fence to bound the area. Often there will be intentionally planted vegetation, such as ground cover- like Vinca, perennials such as Daylilies and Daffodils, or memorial trees or shrubs such as Cedar trees or Passion Flowers. Occurring in open fields or in the

woods, these burials can be those of small, historic family burial grounds or cemeteries associated with now non-operational churches. Additionally, burials within the context of historic rural farms, small or independent church congregations, and even in urban environments such as Wilmington, are often overlooked; seemingly invisible on the landscape. What is thought of as traditional granite or marble headstones used to delineate burials may be few or absent. Other means of marking burials were used but not readily recognized by the casual observer. If the material was organic, like a wooden marker, it often did not survive. Other, more permanent materials, such as rock, pieces of iron, colored glass or shells, may have been used. However, since they are native to Delaware, they are often overlooked as either naturally occurring to the location or random discards. On closer inspection, however, patterns of placement of such material are clearly not random or natural; but rather deliberate, used as careful means to mark the burial of a loved one based on imbedded cultural practices or lack of financial resources.

In viewing these small cemeteries or burial grounds, there is a very high probability that additional unmarked human burials and/or unmarked skeletal remains are present within or adjacent to the marked and bounded burials. To provide for the adequate protection of *all* non-Native American, unmarked human burials and/or skeletal remains, it is important to determine the limits/extent of unmarked human burials and/or skeletal remains which may be present in/adjacent to an otherwise marked cemetery.

Because they are not always easily recognized, unmarked human burials and/or human skeletal remains may be encountered as the result of *any* ground disturbing activity, which may include, but not be limited to construction (housing, roads, ponds, sewer line installation), agricultural practices (cultivation), and/or archaeological survey/excavations. The discovery of these unmarked human burials and/or human skeletal remains is often by pure accident. Given the circumstance of how the discovery occurs, the experience can be extremely disruptive, frustrating and costly. Whenever possible, the Division of Historical & Cultural Affairs (DHCA) believes by proactively locating unmarked human burials and/or human skeletal remains in a non-crisis atmosphere and implementing appropriate legal and/or planning measures to ensure their long term protection is the best management practice. Towards this goal, the Director of the DHCA, may require, as needed, an archaeological survey be undertaken to locate and determine the number and extent of unmarked human burials and/or unmarked skeletal remains, and/or to determine the true limits of these small, partially marked cemeteries resulting from *any* ground disturbing activity. The archaeological survey must be undertaken by a qualified professional(s) with demonstrated training and experience in the identification and excavation of human burials.

III. DISCOVERY & NOTIFICATION:

1. Discovery:

Keeping in mind, unmarked human burials and/or human skeletal remains may be encountered as the result of *any* ground disturbing activity, any person knowingly or

having reasonable grounds to believe they have encountered or have exposed unmarked human burials or human skeletal remains, ***must cease all work in the area of the discovery***. Every reasonable effort to protect the area of the discovery from intrusion, precipitation or adverse temperatures should be undertaken; such as fencing off the area, and covering any exposed burials and/or bone. No materials are to be moved from the discovery area.

A. When construction or other ground disturbing activities, *not associated with an archaeological survey*, triggers the discovery of unmarked human burials or human skeletal remains, the *Medical Examiner (ME) or DHCA must be notified within the hour*. No work in the immediate area of the discovery may occur, other than protecting the location of the burial and/or remains, after a discovery has been made. If there is evidence to suggest the burial/human remains are recent, such as the presence of flesh and blood, the ME should be contacted at (302) 577-3420 or the local law enforcement. ABSOLUTELY refrain from further disturbing the discovery area.

B. When *an archaeological survey* triggers the discovery of unmarked human burials or human skeletal remains, the DHCA *must be notified within the hour*. Survey/excavation not related to the discovery or in the area in which the discovery was made may resume *unless* otherwise directed by the DHCA when initial phone contact has been made. Archaeological survey/excavation may resume in the area of the discovery *only after* approval is given by the DHCA.

C. If a discovery of unmarked human burials or human skeletal remains has not actually occurred but there is reason to believe that such a discovery would or could occur if ground disturbing activity occurs, the DHCA recommends following the procedures outlined below in Section IV and following, as appropriate.

D. The Party (individual and/or organization) who by their actions has the potential to affect the location of unmarked human burials or human skeletal remains is identified hereafter as the Affecting Party.

2. Notification:

Notification to the DHCA of the any discovery of unmarked human skeletal remains, or what is thought to be unmarked human skeletal remains *shall occur within the hour* of the discovery.

A. Notify the DHCA by contacting the Division's *Human Remains Specialist* (Specialist) by phoning (302) 736-7400, during business working hours. Please indicate that you are reporting a discovery and there is urgency to the matter. If the Specialist is not immediately available, the call will be triaged to another

Division staff member. That staff member will advise you of what needs to be done in the interim until the Specialist can return the phone call.

If a discovery is made outside of normal business hours, on a state holiday or over the weekend, leave a detailed message including your name; phone number(s)-office/home and/or cell; identify the nature of the discovery and its location; and, when and how long you expect to be on site. [Faxes or e-mail are **not** acceptable forms of notification. However, the DHCA may request additional information which then may be transmitted by these methods.] Contact will be made with you on the next business day. The DHCA may give instructions on how to secure and/or protect the discovery site until their investigation can be undertaken. *Under no circumstances should work resume in the area of the discovery.* The DHCA will indicate when resumption of work in this area may occur.

B. The DHCA will initiate an investigation of the discovery and will consult with the ME to report the discovery of any human skeletal remains exposed and confirm jurisdiction over the remains. In the case of a discovery of human skeletal remains which is determined **NOT** to be the jurisdiction of the DHCA, the ME will assume immediate and complete control of the discovery, pursuant to Title 29 DE Code, Chapter 29.

C. When consultation with the ME has confirmed jurisdiction over any unmarked skeletal remains is that of the DHCA, the DHCA will provide recommendations on what further survey/excavation work is needed to locate and identify unmarked human burials and/or human skeletal remains. The procedures found in Section IV will generally be followed; however, special circumstances unique to a discovery may require the DHCA to modify that protocol.

IV. IDENTIFICATION:

1. To provide for the adequate protection of non-Native American, unmarked human burials and/or human skeletal remains, as needed, the DHCA may require the Affecting Party to have an archaeological survey be undertaken by a qualified archaeologist.

2. Survey work shall follow the Survey Guidelines established by the DHCA for conducting the archaeological survey. The purpose of this survey will be to: 1) locate unmarked human burials and/or unmarked human skeletal remains; 2) determine, to the extent practicable, the number and extent of unmarked human burials and/or unmarked skeletal remains present; and/or, 3) determine the area extent of unmarked burials which are associated with marked cemeteries. Survey Guidelines are included in Attachment #1.

3. As part of this archaeological survey, the DHCA will require archival research. At minimum, this research will establish if a deed reference to the burial area has been made which legally required access to same by Next-of-Kin when the land was sold; will establish if the burial area was part of a larger tract of land or was a separate legal parcel

retained by the family whose relatives are buried therein; and, will determine if any previous cemetery and/or tombstone records survey (such as Tatnall, Hudson, Dill et al., or Works Progress Administration (WPA)) included the burial area. In the event human skeletal remains are encountered, the DHCA will require more extensive research be undertaken to assist the DHCA in understanding the history of the burial/cemetery and who is buried therein to assist in locating possible Next-of-Kin.

4. The DHCA will determine when Osteological analysis of excavated skeletal remains is needed and the level of analysis appropriate for all human remains excavated. The DHCA will consult with a physical anthropologist(s) who specializes in human Osteology and Odontology, on an as needed basis, to determine the level of analysis appropriate. When Osteological analysis is recommended by the DHCA, the analysis will be undertaken by a qualified Osteologist/skeletal analyst, and paid for by the Affecting Party. The purpose of this analysis is to determine the age, sex and social/cultural affiliation of individuals buried, if possible. This information will aid in the location of potential Next-of-Kin.

5. The DHCA will determine when analysis of artifacts found in association with unmarked human burials and skeletal remains will be undertaken. The purpose of this analysis is to determine the approximate date(s) of interment as well as the age, sex and social/cultural affiliation of individuals buried, if possible. This information can also aid in the location of potential Next-of-Kin. This work may be done by the DHCA, if time and personnel permit. When this analysis is not undertaken by the DHCA, this analysis will be done under contract for the Affecting Party. If this analysis is undertaken by others, the DHCA will review a submitted written work plan prepared by a professional archaeologist(s) and/or by individuals specializing in the analysis of material culture, conservation and restoration of artifacts. No work can commence until the DHCA accepts the work plan.

6. A report documenting an archaeological survey and its results will be prepared by the Affected Party's qualified archaeologist for the DHCA. The DHCA has provided Report Guidelines for archaeological surveys conducted pursuant to Subsection 5410 and this Section of these Procedures. The DHCA will review and approve the report for final acceptance and distribution. Report Guidelines are provided in Attachment #2.

7. Copies of reports prepared under this Section will be provided to the Affecting Party, the property owner if different from the Affecting Party, the county or municipality in whose jurisdiction the survey has taken place, appropriate local archival repository/library, as determined by the DHCA, and any Next-of-Kin identified as being related to the unmarked human burials and skeletal remains excavated or exposed.

V. PUBLIC NOTICE PROCESS/LOCATING NEXT-OF-KIN:

1. In the event unmarked human skeletal remains are discovered, the DHCA is required to make reasonable efforts to locate Next-of-Kin who may be related to the individuals whose remains have been exposed. The mechanism to locate Next-of-Kin is a Public Notice process.

2. The DHCA will prepare a Public Notice which will include, to the maximum extent practicable, the following information:

- how the discovery was made;
- where it was made;
- when it was made;
- any archaeological excavation(s) undertaken in association with and/or the result of any investigation required;
- the extent and number (actual or estimated) of burials and/or individuals present;
- information on estimated age at death, sex and social/cultural affiliation of individuals present;
- estimated date(s) of burial/interment; and,
- archival and family/genealogical information which document who the DHCA believes the discovered individuals may be.

3. The DHCA will publish this Public Notice, at least once per week for two successive weeks, in a newspaper of general circulation in the County where the discovery occurred. A 30 day comment period begins immediately after the *second* Public Notice has been published. Within this 30 day comment period, any individuals who have reason to believe they may be Next-of-Kin and/or have direct evidence their relatives were buried at the location of the discovery site should contact the DHCA's Human Remains Specialist (Specialist) by mail at: Division of Historical & Cultural Affairs, #21 The Green, Dover, DE 19901 or by phoning (302) 736-7400, during business working hours. DHCA will determine if information supplied by individuals responding to the Public Notice reasonably supports their claim of a familial association with the unmarked human skeletal remains and unmarked burials.

4. After the 30 day comment period closes, the DHCA will contact those individuals who have established a reasonable claim of kinship with those individuals represented by the discovered unmarked human skeletal remains and unmarked burials. The DHCA will consult with Next-of-Kin on a Treatment and Disposition Plan, as discussed in Section VI, which will be prepared by the DHCA for their review and approval. Next-of-Kin will also have the opportunity to suggest/discuss other alternatives or options for inclusion in the final Treatment and Disposition Plan.

VI. DEVELOPMENT OF TREATMENT AND DISPOSITION PLAN:

1. Content of a Treatment and Disposition Plan: Once an archaeological survey has been completed and a Public Notice has been published, the DHCA will prepare a draft Treatment and Disposition Plan (hereafter, the Plan) which will include a general discussion on:

- what triggered the discovery;
- the conditions under which the discovery was made and any archaeological survey/excavations which occurred;
- the known and/or anticipated number of burials;
- biological profile information (i.e. age, sex, social/cultural affiliation, etc.) on burials, if able;
- diagnostic artifacts found which help date the age of the burials, if present;
- condition of human remains and artifacts;
- type(s) of Osteological analysis to be carried out, if not already completed and if needed;
- type(s) of analysis needed for artifacts discovered but not yet analyzed;
- need for undertaking artifact conservation; and,
- what information DHCS does not have, but would benefit from knowing, if more survey work were to be done—specifically, to locate all burials present for protection or possible relocation—for disposition consideration.

Treatment Recommendations will be presented and may include, but not be limited to: no further work is needed; additional survey is needed to locate all associated burials as well as/or the physical limits/extent of the burials; standard and/or specialized Osteological analysis; standard and/or specialized analyses artifact analysis; and, conservation of human remains and/or artifacts found in association with burials.

Disposition Recommendations will be presented and may include, but not be limited to, identifying appropriate temporary and/or long-term locations where discovered human skeletal remains and/or unmarked human burials will be located; how the human skeletal remains and/or unmarked human burials will be protected; how the area where these human skeletal remains and unmarked burials located will be used and maintained; and, access opportunity for Next-of-Kin.

2. Disposition Alternatives: The following are the preferred Disposition Alternatives which the DHCA will normally consider when developing a Plan for the dignified and respectful disposition of human skeletal remains and/or unmarked human burials.

A. In Place Preservation with Preservation Covenant:

In place preservation of unmarked human burials and/or skeletal remains is the preferred alternative when there is clearly the option to do so. Preservation in place should occur when: 1) the discovery of unmarked human burials and/or skeletal remains does not occur during construction activities; or, 2) a discovery has been made during the early stages of a construction project which can be reasonably modified to provide for in place preservation. Additionally, as a matter of fulfilling its protection mandate, the DHCA recommends a Preservation Covenant be placed on the entire area containing unmarked human burials and/or skeletal remains. This Preservation Covenant will provide the means to guarantee protection and maintenance, in perpetuity, of these burials and/or remains, as well

as provide for access by any Next-of-Kin who are identified during the Public Notice process. This disposition alternative is recommended to be used even when no Next-of-Kin are identified.

B. Excavation and Re-interment to Commercial or Regulated Cemetery:

When in place preservation, as discussed above in Disposition Alternative #A, cannot be reasonably expected to occur, and there is an imminent or reasonable expectation of a future threat of destruction, the DHCA will consider the excavation and re-interment of unmarked human burials and/or skeletal remains. Examples of situations when in place preservation is deemed inappropriate are:

- discovery of burials/remains *during* construction of a large project, such as a highway or commercial property;
- during the construction of a house where the preservation of a burial area will preclude the completion of the structure and/or associated amenities; or,
- during the construction of a utility line within a highway Right-Of-Way, which is subject to future installation of additional utilities.

If Next-of-Kin are identified during the Public Notice process, the Affecting Party will be responsible for the identification of locally available commercial or otherwise regulated cemeteries for possible re-interment and will provide the DHCA and Next-of-Kin with information on such locations for their consideration. The Next-of-Kin and DHCA may offer suggestions of alternative locations for the Affecting Party to investigate. Pursuant to Subsection 5406(d), if Next-of-Kin are identified, state law mandates they must bear the expense of re-interment if the Affecting Party is not a state agency. If the Affecting Party is a state agency, that agency is responsible for expenses associated with re-interment. If Next-of-Kin object to bearing the expense of re-interment, the DHCA will consider the option of having the Affecting Party bear the expense of re-interment. Such a consideration will be presented to the Next-of-Kin for their review and approval. The use of a commercial or regulated cemetery provides for the preservation and protection of unmarked human burials and/or skeletal remains, in perpetuity, and allows Next-of-Kin access to the burial site of the deceased.

C. Excavation and Re-interment in a New, Non-Cemetery Location with Preservation Covenant:

When in place preservation, as discussed in Disposition Alternative #A, cannot be reasonably expected to occur, and there is an imminent or reasonably foreseeable expectation of a future threat of destruction to unmarked human burials and/or skeletal remains, the DHCA will consider the excavation and relocation of unmarked human burials and/or skeletal remains. Examples of situations when in place preservation is deemed inappropriate are: discovery of burials/remains *during* construction of a large project, such as a highway or commercial property;

during the construction of a house where the preservation of a burial area will preclude the completion of the structure and/or associated amenities; or, during the construction of a utility line within a highway Right-of-Way, which is subject to future installation of additional utilities.

If Next-of-Kin are identified during the Public Notice process, the Affecting Party will be responsible for the identification of alternative locations nearby for possible relocation of all excavated unmarked human burials and/or skeletal remains. Next-of-Kin and the DHCA may offer suggestions for the Affecting Party to investigate. Pursuant to Subsection 5406(d), if Next-of-Kin are identified, state law mandates they must bear the expense of relocation if the Affecting Party is not a state agency. If the Affecting Party is a state agency, that agency is responsible for expenses associated with re-interment. If Next-of-Kin object to bearing the expense of re-interment, the DHCA will consider the option of having the Affecting Party bear the expense of re-interment. Such a consideration will be presented to the Next-of-Kin for their approval. Finally, the DHCA will require a Preservation Covenant be placed on the relocation site. This Preservation Covenant will provide the means to guarantee protection and maintenance, in perpetuity, of these unmarked human burials and/or skeletal remains as well as provide for access by any Next-of-Kin.

D. Excavation and Storage in a State Repository:

When in place preservation, as discussed in Disposition Alternative #A, cannot be reasonably expected to occur, and there is an imminent or reasonably foreseeable expectation of a future threat of destruction, *and* no Next-of-Kin come forward as a result of the Public Notice process, the DHCA will recommend unmarked human burials and/or skeletal remains be placed in the DHCA's State Museum repository for curation. If at some future date, Next-of-Kin are identified, the DHCA's Human Remains Specialist will prepare a revised Treatment and Disposition Plan for their review and approval. Any unmarked skeletal remains and/or associated artifacts which are curated at the DHCA's State Museum repository may be subject to professional research. Individuals wishing to conduct research must submit a written proposal to the DHCA for review and approval.

3. With Disposition Alternatives #A, #B and #C, Next-of-Kin will have the opportunity to review and approve the recommended Disposition Alternative. Any additional disposition alternatives or conditions offered by any Next-of-Kin will be collectively discussed before a final Plan is approved and put into action.

VII. CONSULTATION WITH NEXT-OF-KIN, AFFECTING PARTY, AFFECTED PROPERTY OWNER(S) AND COUNTY OR MUNICIPALITY REPRESENTATIVES:

1. At the end of the 30 Day Public Notice comment period, referenced in V(4) above, the DHCA will contact Next-of-Kin identified through the Public Notice process, the Affecting Party, Property Owner(s) if different from the Affecting Party, and Representatives from the County or Municipality which has jurisdiction over the location where the unmarked human burials and/or skeletal remains were discovered. These individuals will constitute the normal list of Consulting Parties. Additional people may be added to this list, with the approval of the DHCA. The purpose of this communication with the Consulting Parties will be to set up a meeting, on site if appropriate, to present all attendees with a copy of the proposed draft Treatment and Disposition Plan (Plan). The Plan will be briefly discussed and additional suggestions will be received from Consulting Parties for inclusion in the preparation of the final Plan for the review and approval by the Next-of-Kin. The Consulting Parties will be asked to review the draft proposal and to contact the DHCA with comments and suggestions. The Plan will be revised in accordance with the comments and suggestions made. The Consulting Parties will then have an opportunity to receive and review the revised Plan before the DHCA will request the Next-of-Kin's approval. In the case of multiple Next-of-Kin, a simple majority approval will be required. The Affecting Party will then be bound to abide by this approved Plan.

2. The Next-of-Kin, or any other Consulting Party, may request additional archaeological excavation be carried out to identify/locate *all* unmarked human skeletal remains and/or unmarked burials for the purpose of fulfilling the intent of or terms of the Plan. If the DHCA believes the work is appropriate and justified, the Affecting Party will be financially responsible for all associated costs. Landowner permission, if not the Affecting Party, will be required. If the DHCA believes the work is not adequately justified, but the Next-of-Kin or any other Consulting Party still want the additional archaeological excavations carried out, the Next-of-Kin or other consulting party will be financially responsible for all associated costs. The DHCA will provide technical assistance to the Affecting Party, Next-of-Kin or Consulting Party for the contracting of this work and will have oversight over this archaeological excavation.

VIII. IMPLEMENTATION OF A TREATMENT AND DISPOSITION PLAN (PLAN):

1. Once the Plan has been approved by the Next-of-Kin, the DHCA will consult with the Affecting Party to establish a detailed schedule to execute the terms of the Plan. The DHCA will provide the other Consulting Parties with a copy of this schedule and will note when their involvement in the implementation of the terms of the Plan may be needed.

2. The Affecting Party will provide the DHCA and other Consulting Parties with periodic progress reports on the implementation of the Plan. These reports will itemize the specific activities to be carried out, what progress has been made, estimated completion dates of each activity, as well as include any problems or delays being experienced which may cause a need to revise the original schedule.

3. If at any time, the Affecting Party has a problem implementing the specific terms of the Plan, the Affecting Party will immediately consult with the DHCA. As appropriate, the DHCA may request the other Consulting Parties to participate in any discussions on how to resolve any potential problems.

4. Upon the successful implementation of all the terms of the Plan, the DHCA will advise all the remaining Consulting Parties and the Plan will be considered implemented.

5. If at any time, any Consulting Party raises a concern on the manner in which the Affecting Party is implementing the terms of the Plan or believes that any term of that Plan has not been satisfactorily completed, the DHCA should be contacted. The DHCA will make the appropriate inquiry and determine if additional consultation between all the Consulting Parties is warranted to ensure that any term of the Plan will be implemented as proposed or will require modification. Any suggested modifications to the Plan must be approved by the Next-of-Kin.

IX. GLOSSARY

1. Adequate Protection: A reasonable expectation that no harm (inadvertent or deliberate) will occur to unmarked human burials and/or skeletal remains other than by natural processes over which there is no reasonable expectation of control.

2. Affecting Party: Individuals, agencies, companies or organizations who by their direct or indirect (immediate and/or reasonably foreseeable) actions will or could initiate disturbance or otherwise intrude onto a burial location which could result in damaging unmarked human burials and/or skeletal remains, or could create an attractive nuisance which could result in vandalism.

3. Commercial or Regulated Cemetery: Any for-profit or not-for-profit organization, partnership or corporation, be it affiliated with a religious organization or is otherwise independent, which provides burial plots and their perpetual care for the purpose of interment of the deceased.

4. Consulting Parties: Individuals, organizations, or other entities who have a demonstrated interest (familial, legal or economic) in the identification, treatment and disposition of unmarked human burials and/or skeletal remains. This will include, but not necessarily be limited to, the DHCA, Affecting Party, Next-of-Kin, Property Owners of land where unmarked human burials and/or skeletal remains may be located, if different from Affecting Party, and the governmental body which has jurisdiction over the area where the unmarked human burials and/or skeletal remains are located.

5. DHCA: Director of the Division of Historical and Cultural Affairs, Department of State, and/or his/her designated representative.

6. Disposition: The act of providing for a permanent, protected location for unmarked human burials and/or skeletal remains and all associated cultural materials. This includes in-place preservation as well as relocation.
7. Ground/Land Disturbing Activities: Any action that intrudes into the ground, results in the movement of or removal of vegetation or cultural features, exposes soil previously covered by vegetation or other man-made materials, or which otherwise physically alters the landscape.
8. Next-of-Kin: Person or persons related to deceased through blood or marriage. In the case of unmarked human burials and/or skeletal remains, this relationship is established through documented historic research demonstrating a genealogical relationship.
9. Osteological Analysis (Skeletal Analysis): The study of the human skeleton to develop a biological or demographic profile (age at death, sex and stature); assess health of individual and how individuals respond to various life stresses (diet and growth patterns), the presence of diseases and trauma; determine biological/cultural affiliation; and, identify interment practices.
10. Osteologist/Skeletal Analyst: “Any person having (i) a graduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic Osteology, or other relevant aspects of physical anthropology, or medicine, (ii) a minimum of one year’s experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity, and (iii) designed and executed a skeletal analysis, and presented the written results and interpretation of such analysis. (Title 7 DE Code, Chapter 54, Section 5402.4)”
11. Preservation Covenant: A legal instrument which provides a binding agreement on current and future owners of property to protect and maintain important historic elements, characteristics and/or features from harm. A sample Preservation Covenant is attached (Attachment #3). This covenant may be used as a general model and refined to suit specific project needs.
12. Professional/Qualified Archaeologist: “A person having (i) a graduate degree in archaeology, anthropology, history or another related field with a specialization in archaeology. (ii) a minimum of one year’s experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains, and (iii) designed and executed an archaeological study and presented written results and interpretations of such study (Title 7 DE Code, Chapter 54, Section 5402.3).”
13. Repository: A facility which provides for the systematic curation, long term storage and care of artifacts, records and documents associated with archaeological surveys and excavations in accordance with professionally accepted museum and archival practices by professionally trained curators. The State of Delaware has two state

designated repositories: the University of Delaware and the Delaware State Museums. (Title 7 DE Code, Chapter 53, Section 5310)

14. Treatment: The act of subjecting unmarked human burials and/or skeletal remains, and all associated cultural materials to excavation, recordation, processing, analysis and curation.

15. Unmarked Human Burial: “Any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased (Title 7 DE Code, Chapter 54, Section 5402.5).” This will include any evidence which identifies the presence of a burial including burial shaft features, portions of a brick vault, portions of coffins (container), coffin hardware, and/or burial related grave goods such as personal effects buried with the individual.

16. Unmarked Human Skeletal Remains: “Any part of the body of a deceased human being in any stage of decomposition (Title 7 DE Code Chapter 54, Section 5402.2)” for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

Attachment #1: Survey Guidelines for Locating and Delineating Unmarked Human Remains/Burials/Cemeteries:

I. PURPOSE:

This is a guide to identify the issues and approaches which the Division of Historical and Cultural Affairs (Division) recommends be considered when conducting surveys in the State of Delaware for the purpose of locating unmarked human remains and/or human burials and their extent, as well as delineating the limits of a marked or partially marked cemetery. Consultation with the Division's Human Remains Specialist (Specialist) should occur before a survey commences and it **must** occur when human remains are exposed, pursuant to Delaware's Unmarked Human Remains Law (Title 7 Delaware Code, Chapter 54) and the Division's *Procedures to Follow Upon the Discovery of Unmarked Human Remains* (2005).]

II. DETERMINE THE GOALS AND OBJECTIVES OF THE SURVEY:

The goal(s) and objectives of a survey need to be clearly defined. They serve to dictate various facets of the survey work to be undertaken.

Determine survey goal(s):

- Is a goal of the survey to locate unmarked human remains/burials;
- Is a goal of the survey to locate a cemetery; and,
- Is a goal of the survey to determine if archival records reference these unmarked human remains/burials or cemetery?

Determine survey objectives:

- Locate the unmarked remains/burial(s) and/or all burials within your survey area;
- Determine the extent and limits of all burials and their spatial relationship to each other within the survey area; and,
- Conduct background research on the history of the property to locate any legal provisions made by family to preserve and maintain the burials and/or cemetery and to provide access for Next-of-Kin.

The survey methods and techniques to be employed must be able to meet each objective and ultimately the overall goal(s) of a survey. Modifying methods and techniques may need to occur at any time during a survey. There is a need for flexibility to accommodate changes in a field strategy or analytical method to ensure a successful and timely outcome. Consultation with the Specialist to discuss any such changes is always available.

III. EXISTING CONDITIONS/SITE SURVEY PREPARATION:

Determine the existing conditions surrounding and within a rural or open survey area:

- What is the accessibility to the survey area. Is it heavily wooded/overgrown vs. open or relatively open;
- What is the ground visibility within the survey area;
- Does any part of a survey area need to be cleared to perform the field work or to provide access for equipment?
 - If yes, saplings and small brush should be cleared and removed by hand, especially where you suspect burials may be present. Do not attempt to cut and remove large trees within a survey area; and,
 - Caution should be exercised when undertaking excavations which could severely damage a tree's root system. The damage could eventually cause the tree to die and become susceptible to wind and storm events; thereby, causing the root system to heave out of the ground when it topples. If a burial is located within the root system, it too will be uprooted during such an event.

Determine the existing conditions surrounding and within an urban or confined survey area:

- Are there any trees blocking access to or located in the survey area ;
- What are the surface conditions/visibility;
- Should concrete or macadam be removed before excavation can occur? If so, how can this be done while protecting what is underneath;
- Is there an area to stockpile excavated fill within or immediately adjacent to the survey area? Will it need to be trucked off site? If so, where;
- What security for personnel, equipment and burials is needed; and,
- How will access to survey area for personnel and any heavy equipment be accomplished.

Inspect the survey area **before** any cleaning or clearing is undertaken:

- Look for evidence of head/foot stones made of traditional and non-traditional materials;
- Look for patterned shallow depressions;
- Look for ornamental vegetation not normally native to the setting/location;
- Look for ruins of fencing and/or walls which are meant to define the perimeter;
- Record (via provenience mapping and in situ photography) any of these observed burial or cemetery indicators before any disturbance occurs;
- If additional burial related materials are exposed during clearing and cleaning, the recording of this material is required;
- If burial related material must be removed, it must be recorded and retained in a secured location prior to conducting field work; and,

- Consult with the Specialist, if an extensive amount of burial related material is observed, to determine if special consideration needs to be taken in recording and/or retrieving this material for analysis.

IV. BACKGROUND RESEARCH:

Conduct background research:

- Determine what is already known about the survey area;
- Review the Division's Cultural Resource Survey (CRS) maps, reports and files to determine if any previous survey work was done in the general area; and,
- Ensure that qualified and experienced personnel are used.

Conduct archival research of the survey area taking into considerations the following:

- What is the land use history of a survey area;
- Who owned the land;
- Is there any documented information of a cemetery being located on the land? If so, is it possible to determine when it was created? Last used? Who is buried there;
- Is information available regarding the location and size of the cemetery;
- When was ownership of the land relinquished by the family whose ancestors are buried there;
- Were there any provisions/restrictions made at the time of land transfer/sale of the larger parcel which either excluded the transfer/sale of the cemetery area or specified that Next-of-Kin were to have access and/or use of the cemetery at their discretion after the sale;
- Were there details on how Next-of-Kin would access the cemetery area;
- Were there any provisions for maintenance of the cemetery; and,
- Excluding cemeteries from the sale or transfer of a parcel of land can have legal ramifications on future land use or the limiting thereof. It is important to developers, in particular, to have this type of background research carried out before drawing up a development plan.

Resources to consider:

- Access the Delaware Public Archives for initial research. The Archives has a multitude of sources to tap, including but certainly not limited to: cemetery and tombstone survey records; birth, death and marriage records; census data; deeds; wills, probate and estate records; insurance maps and records; historic church surveys; and photographs; and,

- Solicit information from local informants. Families who have lived in an area for generations usually are familiar with local areas and related history.

Points to consider:

- Where some people, or groups of people, are under represented in archival documents, family histories and personal recollections may provide important clues as to the location of burial sites and who these individuals may be;
- Caution must sometimes be exercised when dealing with members of different social/cultural groups and/or with the elderly. Trust must be established before questioning begins;
- Establishing contact with influential members of a community is often the best way to gain an introduction and acceptance;
- Clarify your purpose for interviewing informants who may be Next-of-Kin to deceased individuals buried in a survey area; and,
- Next-of-Kin are often reluctant to come forward with information for fear of somehow being financially responsible for the maintenance of a burial area or even for relocating their deceased relatives, when this is clearly not the case.

V. FIELD WORK:

Goal(s), objectives and field conditions will dictate how survey field work will be conducted as well as what methods and techniques should be employed. Field methods can be either invasive or non-invasive.

Geophysical survey techniques are types of non-invasive survey methods:

- Examples of these types of techniques include resistivity, conductivity, magnetic, radar and magnetic susceptibility to name the more common;
- Very few such surveys using these techniques have been carried out in Delaware;
- There is insufficient data and/or experience to determine the reliability, limitations and conditions under which the results from each of these techniques can be used, alone or in combination, with confidence; and,
- The survey results must always be “ground truthed,” using traditional, invasive field survey techniques.

Traditional field techniques used in most field work are types of invasive survey methods:

- Examples of these types of techniques include surface collection (random or controlled), shovel test pits (STPs), test units, and trenching or stripping

(by hand or by machine);

- Surface collection, while normally thought to be a non-invasive survey technique, usually includes plowing and disking to prepare the survey area. It is the least invasive technique and can be used only when the ground surface is exposed;
 - Taking advantage of bare spots, rodent burrows and tree throws can provide some, albeit limited examination of the ground surface;
 - The location of a survey area where burials may be present often does not lend itself to plowing and disking. Site preparation is difficult to control, has a high potential to cause damage to such fragile subsurface features and is not normally done;
 - The value and reliability of information garnered from artifacts (or the lack thereof) from this data retrieval technique are varied depending on the conditions under which a survey was conducted;
- Excavating STPs on a set interval or grid is also a commonly used technique to locate archaeological site data.
 - Its value is in locating (determining presence/absence) site data; however, the ability to delineate the internal organization of a burial area is limited using this technique;
 - If there is some surface anomaly suggesting a burial may be present, a STP can confirm the presence of a burial *if* direct evidence, that is, bone or grave furniture, is recovered. Without **direct** evidence of human intervention, it is not possible to determine if feature fill is anthropogenic in origin or not;
 - Even if a feature is anthropogenic, a STP can only confirm a feature is a burial *if* direct evidence is found;
- Opening or exposing larger areas of the subsurface provides a greater opportunity to locate features which may be discernable as burials;
- Excavating test units (in 1', 2', 3' or larger squares), while labor intensive, can provide better subsurface exposure, but it is still limited in how much site data can be discovered efficiently.
- Trenching or stripping in various dimensions (linear or large blocks) provides the greatest amount of continuous subsurface exposure and ability to see patterned behavior in feature location and distribution;
 - Trenching can be done by hand, by using a smooth-bladed Gradall, or a backhoe with a smooth edged bucket, or a combination of the two which is usually the most efficient, if field conditions permit;
 - The field conditions of a survey area, such as the presence of large trees or a small, well shaded, paved urban rear yard, may be a limiting factor in the choice of machinery one can use, if at all;
 - The likelihood of damaging/disturbing unmarked burials will be the greatest with the use of heavy equipment for trenching;
 - When considering mechanical trenching, it is important to have an experienced operator and an archaeologist overseeing the work so

that such disturbances do not inadvertently happen or can be minimized;

- It is important to perform some deep trenching to be sure that burials are not missed if the organic residue normally contained within the burial feature fill has leached out over time or are buried under a complex series of fill episodes;
- Whether the trenching is done by hand or by machine, careful examination of the exposed subsurface soils by a trained archaeologist must occur;
- It is not necessary to sift excavated soils removed by trenching to look for artifacts; however, an archaeologist(s) should retain any that is exposed;
- If artifacts are obvious modern debris, their presence should be noted before discarding in the field;
- If bone is exposed, and unless it is very obvious the material is non-human, it is important to notify the Specialist to determine if it is human; and,
- Non-human bone should be noted and then discarded.

Given the different data retrieval techniques discussed above, with their advantages and disadvantages, it is likely that a combination of techniques will be employed to retrieve the necessary archaeological data to meet the goal(s) and objectives of the overall project survey.

VI. SAMPLING STRATEGY:

It is not always possible to excavate 100% of a survey area, nor is it always necessary. Many factors come into play when developing a field strategy including deciding how much of a survey universe will actually be investigated and to what level of intensity.

Points to consider:

- Simple issues such as extant field conditions or budget will effect how much can be included in a survey and how intensely;
- The question of how much testing is enough is a realistic issue needing careful consideration. For the archaeologist and his/her client, it is a matter of “due diligence.” Has the work that has been undertaken sufficient to secure the data needed to meet the goal(s) and objectives of a survey;
- When only the limits of a demarcated or partially demarcated cemetery (with a fence or wall or located as an isolated island in an open field) needs to be delineated, excavating around the perimeter out to a **minimum** of 10 feet *beyond* the last burial is usually sufficient to feel confident the cemetery limits have been identified;

- In instances where there are not conspicuous indicators of a cemetery or burial area and its limits, there will be a need to excavate a larger area. In these types of instances, a **minimum** of 20% sampling of a survey area is recommended;
- A series of linear trenches at a set interval or large block trenching usually provides a good opportunity to determine the presence/absence of burials, any pattern of burial placement and orientation, as well as a sample of burial features present from which a total burial population estimate can be projected;
- If there is a need to address more or complex questions, the field strategy will likely include several survey techniques and possibly different levels of intensity. Do you need to locate unmarked burials as well as evidence of a fence or other historic, non-extant delineator surrounding the burials? Is it important to know the number of burials present? Are there different intrasite burial patterns? If so, can you determine possible explanations for the different practices? Are they due to different times when a cemetery was used? Do different burial patterns reflect different treatments based on sex, age or social/cultural affiliation? In cases like these where it is important to know where all burials are located, 100% or near that percentage sampling is obvious;
- Sampling strategies can and have been devised using combinations of different field techniques and have met with success. Such approaches are welcomed and will be considered;
- The collection of artifacts is another sampling issue to be considered. How much do you collect? The best rule to go by is when in doubt, collect it; and,
- Whenever there is any doubt as to field techniques and sampling strategies, consult with the Specialist before developing a proposal and/or commencing work.

VII. RECORDING:

A Site Survey Map is to be created. Information to be incorporated on this map includes:

- All features (anthropogenic and non-anthropogenic), as well as relevant setting information (trees/woods, tree lines, fields, streams, marsh or wetlands, parking lot, urban house lot, ornamental plantings, fence ruins, roads, buildings, cemetery features such as head and footstones, nontraditional markers such as shells, stones, depressions, etc.);
- In some cases, where there is a dense scatter of head and footstone fragments, plotting their general distribution across a survey area may suffice. This should be discussed with the Specialist;
- The general integrity (evidence of disturbance and what type) of a survey area;

- A datum, scale, north directional arrow, the site name and number, the name of the person who created it and the date;
- The consultant has the option of using GPS or a traditional transit to create the site survey map; and,
- The survey datum must be tied to a known/fixed point; either a specific reference on a development plan, a property plat or tax parcel map. It is recommended whenever possible to have a Registered Delaware Land Survey plot the survey map details on these types of documents.

Photography is to also be undertaken during all phases of the excavations/survey.

- Representative photographs will be taken of the general site survey area and of the field work; photography will also be undertaken during all phases of the excavation/survey;
- Photographs will taken of ruins, head and/or foot stones, landscape features and exposed subsurface features;
- Any information which is present on extant headstones and fragments will also be photographed and transcribed;
- Photographs of artifacts will also be taken. Individual shots of important, unusual and/or diagnostic artifacts should be taken; collections of other artifacts can be grouped for photography; and,
- Aat present, there is no acceptable long term curation for digital photography. While this medium can be used, it must be duplicated with B/W prints and color slides.

Recording archival research should include:

- Archival documentation should be referenced following standards citation practices;
- Important archival photographs, maps and/or other documents for reproduction and inclusion in the report.

VIII. ARTIFACTS AND ECOFACTS:

In many instances, artifacts and/or ecofacts relating to a burial feature(s) or a cemetery may not be present on the surface or located during excavation. However, when artifacts are found:

- Their location and distribution should be noted on the site survey map;
- as discussed in Section V above, collecting artifacts and ecofacts during subsurface excavations will be carried out;
- As needed, consultation with the Specialist to determine what should be retained is recommended;

- If fragile and/or organic materials are recovered, consultation will be required to determine if short-term conservation of these artifacts and/or ecofacts will be required before the commencement of analysis; and,
- The need for long-term conservation will be discussed with the Specialist when laboratory processing and analysis of these excavated materials commences.

IX. ANALYSIS AND INTERPRETATION:

- Analysis of artifacts and ecofacts should follow current professional standard practices;
- Cleaning, cataloging and basic identification and tabulation of these must be undertaken;
- Artifacts will be classified by material, manufacturing technique, if appropriate, dates of manufacture and/or general availability as well as function;
- Ecofacts will be classified wherever possible by material and taxa and tabulated. If contextual function can be ascertained, this will be included;
- If specialized analyses, such as X-ray of metals or fabric and/or clothing related identification, are needed, this will be discussed with the Specialist prior to undertaking such work;
- All features encountered during the field survey need to be analyzed to the degree possible based on feature outline (or if any sampling of same occurred) and any associated artifacts from surface and/or subsurface fill;
- Assignment of possible age of burial features should be addressed, if possible;
- The distribution of features, artifacts, and any above ground materials (head/foot stones, fence or walls or ruins, landscape plantings) will be considered as part of the analysis and interpretation;
- From the analysis what questions can be asked and answered? For example, are burials located outside of a formally defined cemetery? Is there any intrasite variability in burial distribution and/or mortuary practices;
- The analysis of archival research will also be undertaken to determine which sources of information were used, how well did these sources aid in characterizing the cemetery/burials, the history of land use, who controlled the land, who may be buried in a survey area, etc. Are there any legal issues of ownership, access and/or maintenance;
- Did the research confirm and support or conflict with the results of the field work;
- Were there any discrepancies between field observations, artifact analysis and information garnered from historic documents? If so, what;
- Are there gaps in the historic data? Is there need for any additional research? If so, what sources should also be checked;

- What about information supplied by local informants? What was learned? Did it help to guide the field work to a specific location? Did it help guide archival research? Did it conflict with the results of either;
- Regarding the purpose of a survey, will there be any possible impact/adverse effect on a burial(s)/cemetery if the area is developed or otherwise modified;
- What would happen to the burial(s)/cemetery if no development occurred; and,
- Is the survey area subject to current and/or possibly future vandalism or other threats?

X. CONCLUSIONS AND RECOMMENDATIONS:

- State the purpose and location of the survey;
- Summarize the background research, fieldwork and results of same and the analysis undertaken and interpreted;
- What conclusions were reached regarding the history of a survey area and the presence of any remains/burial(s)/cemetery? Who might these people be? When were they buried? Is there any supposition on when the cemetery/burial area was first used? How long it was used? Who are potential Next-of-Kin? What are the boundaries? If any reference was found during archival research which identified the size and location of the cemetery/burial area, did the field work “ground truth” it? If not, what was the discrepancy? Can it be resolved? If ownership, access by Next-of-Kin, and/or maintenance are issues, what are some possible solutions;
- If there could be any impacts/adverse effects on remains/burials or a cemetery, what alternatives are there to incurring these impacts? What recommendations can be made to preserve and protect any remains/burials and/or cemetery located in the survey area;
- What were the goal(s) and objectives of the survey? Were they met? If not, what needs to happen to reach the set goal(s)? More field work? More archival research; and,
- What have you learned from this survey which may help you and/or the Division in the future?

All of the basic issues discussed here need to be considered when developing a proposal for conducting an archaeological survey of an area which may contain Non-Native American human remains, burials and/or a cemetery. The topics discussed here should be incorporated in a survey and then documented in a report. The report should be prepared in accordance with the information contained in Attachment #2: *Report Guidelines for Unmarked Human Remains/Burials/Cemetery Surveys* (2005).

Attachment #2: Report Guidelines for Unmarked Human Remains/Burials and Cemetery Surveys:

I. PURPOSE:

This is a guide to identify the information which, minimally, should be included in a report submitted to the Division of Historical and Cultural Affairs (Division) when reporting on surveys conducted to locate unmarked burials, unmarked human remains or to delineate the limits of a marked or partially marked cemetery.

II. SURVEY REPORT CONTENTS:

1. Title Page:
 - Title of report, including archaeological site number;
 - Author and consulting company (with address);
 - Contracting entity or organization (with address); and,
 - Date of report.
2. Abstract:
 - Project name and purpose;
 - Date when survey was conducted;
 - Historic property (cemetery, burials) identified with Cultural Resource Survey (CRS) and Site number(s);
 - Summary of work carried out; and,
 - Results and recommendations.
3. Table of Contents:
 - Headings of information discussed in report; and,
 - List of Illustrations which are to be incorporated *within* the body of the report. Note: If there is a problem with incorporating an illustration within the body of the report, discuss this with Division's Human Remains Specialist before finalizing the report.
4. Introduction:
 - Project description;
 - Project location (include a USGS location map as well as a site specific location map which denotes existing conditions);
 - Size of the area surveyed;
 - Existing field conditions (e.g. cultivated fields, fallow, wooded, grass vs. urban yard, parking lot etc.);
 - Who sponsored the survey;
 - What action mandated the survey be carried out (i.e. compliance with the Unmarked Human Remains Law, Desecration of Burial Place Law;

County Planning Office recommendation or requirement, Preliminary Land Use Service (PLUS), Division of Historical and Cultural Affairs, etc);

- What was the goal of the survey;
- What type of work was carried out (research as well as field work);
- Date of research and field work; and,
- Photographs showing the general location and existing conditions of the survey area.

5. Research and Field and Laboratory Methods:

- What was the purpose of the research;
- What archival research was conducted? Where? What documents were accessed? Did you canvas for local informants? Were there problems? If so, discuss problems and how they were resolved;
- What was the objective of the field work? What methods were used? Discuss why these methods would produce the desired results. What obstacles, if any, hindered the field work (e.g. difficulty accessing survey area, field conditions, etc.)? Did you have to adjust the strategy to achieve the desired outcome;
- Provide photographs of field work to document the procedures used; and,
- If artifacts, ecofacts and/or features were found, describe the laboratory processing and analytical methods used.

6. Results of Research/Field and Laboratory Work/Conclusions:

- What is the history of the property which contains the unmarked remains/burials/cemetery (land transactions and use)? Were there any references to the presence of a cemetery on any maps, historic atlases, deeds, Orphan Court record surveys, or from local informants;
- If local informants were used, identify what information they provided and how you accommodated it in your survey (research as well as field work).
- Were there any legal provisions to exclude the sale of the burial area? to provide access by Next-of-Kin? If so, provide details.
- Were there previous surveys done in the area for tombstone information? If so, provide this information and the source. Are there any discrepancies between tombstone survey sources;
- Were there any historic maps or photographs of the project area? Include copies of this reference material relevant to the survey area;
- Did the results of research cause a need to modify field work in any way;
- What were the results of the field work? Were any adjustments needed once field work was underway? If so, discuss;
- Document the area surveyed, including landforms, vegetation, etc as well as all features encountered. Provide photographs of field work, features and the general setting of the project location. Place north arrow, scale and legend on figure references. Identify your datum from which all measurements are taken;

- Discuss each feature encountered. Identify cultural vs. non-cultural features. Note the condition of each burial (i.e., collapsed vaults, rodent burrows present, depressions the results of burials collapsing, whole or broken head and/or foot stones). What is the burial orientation? Are there ornamental plantings present;
- Were artifacts found? If so, map their location(s). Describe and provide photographs and/or provide an artifact inventory in an appendix. Analyze artifacts within the context of features and/or land forms;
- Were any human remains exposed? If so, what bones were exposed?
- Discuss the discovery and notification to Division which occurred and any subsequent recommendations made by the Division on how to proceed with the rest of the survey;
- Site boundaries: what are the limits of the burial area? How was this determined? Was there a buffer included in this determination? Provide a map which shows the bounded cemetery or burial area with or without a buffer, as appropriate;
- What is the known or estimated number of individual burials within the survey area.

7. Recommendations:

- What were the goals/objectives of survey;
- Did the research and field work achieve them? If no, why? What else is needed to reach the desired outcome;
- If human remains were exposed, what is needed to complete compliance with the Unmarked Human Remains Law? Should burial area be surveyed in and plotted on project plans;
- Is preservation in place an objective? If so, will a preservation covenant achieve this? Are there any special concerns or provisions which should be considered in developing the covenant to maintain and protect burials for the long term;
- Is relocation recommended? If so, why? Is further research and/or field work needed to be able to complete this task? If so, what and why? Is there a need for a preservation covenant on the area of relocated burials;
- Are there any recommendations, based on the experience gained by this survey, which you believe the Division could benefit from when considering similar survey work in the future.

8. Bibliography:

- Use the format referenced in the Division's *Guidelines for Architectural and Archaeological Surveys in Delaware* (1993); namely that of *American Antiquity* or The Chicago Manual of Style for history;
- Identify both primary and secondary sources consulted even if not cited in the text of the report.

9. Appendices:

- Qualifications of Principal Investigator and other lead or supervisory personnel;
- Scope of Work and/or Approved Proposal;
- Artifact Inventory, if needed.

III. ARTIFACTS:

If artifacts are recovered during field work and are to be curated with the Division, consultation with the Curator of Archaeology (Curator) is required before a draft report is submitted. The Curator may be reached at (302) 739-6402. If organic material is found, contact the Human Remains Specialist and/or the Curator immediately to determine what temporary measures are needed to keep these artifacts stable until such time as an appointment with the Curator can be made so a full inspection of the material is possible. The Curator will determine what needs to be done for long term stabilization and preservation of this material. If conservation of any artifacts is needed, a discussion of this must be included in the Results/Conclusions and Recommendations sections of the report.

IV. REPORT SUBMISSION PROTOCOL:

A draft report is to be submitted to the Division for review and approval. The Division will complete its review and advise the consultant if any further revisions are needed. Once the report is considered final by the Division, the consultant will provide the Division with 2 copies of the report. One will be an unbound copy with photos. The second will be a bound copy which may contain copied photos, *if* they are legible; otherwise, photos must be included in this copy. Draft reports will *not* be accepted which do not have Cultural Resource Survey and Site numbers assigned to historic properties and all forms have been provided to the Division's Research Center. These completed forms may accompany the draft report but should not be included in it. If the forms are incomplete, the report will be held and not reviewed until they are completed.

V. ASSISTANCE/CONSULTATION:

If at any time during the course of preparing a report, any question arises relating to its preparation and/or content, the Human Remains Specialist is always available for consultation.

ATTACHMENT #3: SAMPLE PRESERVATION COVENANT

PRESERVATION COVENANT FOR UNMARKED CEMETERY AND/OR BURIAL SITE

THIS AGREEMENT made this _____ day of _____, 200_, by and between _____, Party of the First Part, hereinafter referred to as “Grantor” and the STATE OF DELAWARE, DEPARTMENT OF STATE, DIVISION OF HISTORICAL AND CULTURAL AFFAIRS, an agency of the State of Delaware, Party of the Second Part, hereinafter referred to as “Grantee.”

WITNESSETH:

WHEREAS, the Grantor is the fee simple owner of certain real property located in _____ Hundred, _____ County, the State of Delaware, identified in the County Assessment Office as Tax Parcel Number _____, more particularly described in Exhibit A, attached hereto and incorporated by reference (hereinafter referred to as “Property”); and

WHEREAS, the Grantee, acting by and through the Department of State for the State of Delaware, is an agency of the State government among whose purpose is the conservation of land and/or preservation of buildings, structures and sites of historical significance; and

WHEREAS, the Property contains the Unmarked _____ [Name of Family] Cemetery/Burial Site (hereinafter referred to as “Site”), the limits of which are described as follows [insert the dimensions of the site; describe the survey area and its limits] *or* described in Exhibit B; and [Note: Choose to either provide the survey description in total here or to reference it; be sure to use the appropriate above phrase which applies.]

WHEREAS, the Site possesses significant historic values worthy of preservation and is of great interest to the people of _____ County and the people of the State of Delaware; and

WHEREAS, the administration and enforcement of these preservation covenants by the Grantee will assist in preserving the significant historic values and integrity of this Site;

NOW, THEREFORE, the Grantor hereby covenants on behalf of [him/her/themselves], his/her/their heirs, administrators, devisees, successors and assigns with the Grantee at all times to adhere to the following:

[NOTE: The first 2 stipulations will be crafted to meet the specific situation under consideration; otherwise, here are some general issues to be considered for inclusion in the text of these stipulations.]

1. The Grantor will establish and/or maintain the Site area in [grass/meadow/woods]. [* If specific procedures need to be identified how this is to be done, they should be inserted here.*] The corners/perimeter of the Site will be established by a land surveyor, licensed in the State of Delaware, and delineated by [corner markers set flush in the ground or a perimeter fence with an access gate or opening will be established around the Site]. [*If attendant features such as benches, ornamental landscaping, established trees, and/or a fence, if required, are to be considered as part of the Site, the type of material and method of installation must be approved by the Grantee or may require special direction which should be included here. Likewise, if an information marker is to be established, the material, location and language of the marker will be approved by the Grantee.*] The Grantor will maintain the Site and any attendant features at all times. Maintenance equipment no larger than a riding mower/tractor, or its equivalent, may be used once the grass is established. Maintenance of ornamental landscaping, including any trees that may be present, will be done by hand. If any trees must be removed, the work must be done by a certified arborist, and done in a manner to protect the Site. Trees will be flush cut and no stumps will be removed.
2. The removal of any buildings or structures located within or immediately adjacent to the Site must be done with extreme care to protect the Site and the integrity of the burials located therein. The method of removal must be presented to the Grantee for review and written approval.

3. Except as hereinafter provided, the Grantor shall maintain the Site in order to preserve and protect the integrity of the burials therein. And to that end, except as otherwise provided herein, the Grantor shall neither perform nor permit others to perform any of the following within the boundaries of the Site:
 - a) Transgression of the Site area with any vehicular equipment other than a riding lawn mower/tractor or its equivalent.
 - b) Placement or dumping of substance or material, such as landfill, trash, waste, or unsightly or offensive materials, on, above, or below the Site.
 - c) Placement or deposit of loam, peat, gravel, soil, rock, sand or other material, on, above, or below the Site, [except as may be noted in Item #1 above].
 - d) Excavation or removal of any earth material, plant material, mineral substance or other material, [except as may be noted in Item #1 above.]
 - e) Change the general topography of the land containing the Site.
 - f) Construction of any building or placement of any other structure on, above, or below the Site, [except as may be noted in Item #1 above.]
 - g) Any other activity, which by disturbing, altering, or otherwise affecting the existing surface or subsurface of the Site, would be detrimental to the preservation and protection of the Site.
4. The Grantor shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the Site, and shall promptly report any such disturbance and proposed remedy to the Grantee.
5. The Grantor shall make every reasonable effort to prohibit animals from burrowing into or otherwise disturbing the Site, and shall promptly report any such disturbance and proposed remedy to the Grantee.
6. The Grantee agrees to afford reasonable visitation/access to Next-of-Kin to the individuals buried in this Site. Next-of-Kin are identified as members and relatives of the _____ Family of _____ County, Delaware.
7. The Grantor shall permit the Grantee, at all reasonable times, to inspect the Site to ascertain if the above conditions are being observed. The right of inspection shall

include the right to take photographs, make drawings and prepare written descriptions of the Site at the time of inspection.

8. These covenants shall be deemed to run with the Property in perpetuity as covenants at law and equitable servitude, and extend to and are binding on the Grantor and Grantee, and their respective heirs, administrators, devisees, successors and assigns. The words "Grantor" and "Grantee" shall include all such persons, agencies, entities, and the like. The restrictions, stipulations, and covenants contained herein shall be inserted by the Grantor verbatim in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate of the Property or any part thereof which contains this Site.
9. In the event of a violation of these covenants, in addition to any remedy now or hereafter provided by law, the Grantee may, following reasonable notice to Grantor, institute suit to enjoin said violation and to require, at the expense of the Grantor, the restoration of the Site to the condition and appearance required under these covenants. The successful party shall be entitled to recover all costs or expense incurred in connection with such a suit, including all court costs and attorney's fees.
10. The Grantor agrees the Grantee may at its discretion, without prior notice, convey and assign all or part of its rights and responsibilities contained herein to a third party.
11. The failure of the Grantee to exercise any right or remedy granted under this instrument with respect to any particular violation of these covenants shall not have an effect of waiving or limiting the exercise of such right or remedy with respect to the identical (or similar) type of violation at any subsequent time or the effect of waiving or limiting the exercise of any other right or remedy.
12. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter hereof.
13. The Grantee may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the Grantor, [his/her/their] heirs,

administrators, devisees, successors, and assigns. The Grantee may also make application to the Grantor to modify or cancel this covenant.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands and seal the day and year first above written.

Grantor:

[Name of Grantor]

[Agency/Company, if appropriate]

[Address]

Witness By: _____
[Signature]

Grantee:

Timothy A. Slavin, Director

Division of Historical & Cultural Affairs

#21 The Green

Dover, DE 19901-3611

Witness By: _____
[Signature]

BE IT REMEMBERED that on this ____day of _____, 200_, personally came before me, the Subscriber, a Notary Public for the State of Delaware and County aforesaid, _____[Name of Grantor], party to this

instrument of writing, known to me personally to be such, and acknowledge this Instrument of writing to be [his/hers/their] voluntary act and deed.

GIVEN under my band and seal of office the day and year aforesaid.

Notary Public

Notary Public (Print Name)

My Commission Expires: _____

BE IT REMEMBERED that on this ____ day of _____, 200_, personally came before me, the Subscriber, a Notary Public for the State of Delaware and County aforesaid, Timothy A. Slavin, Director, Division of Historical & Cultural Affairs, party to this instrument of writing, known to me personally to be such, and acknowledge this Instrument of writing to be his voluntary act and deed.

GIVEN under my band and seal of office the day and year aforesaid.

Notary Public

Notary Public (Print Name)

My Commission Expires: _____

